



March 10, 2021

Via ECF

The Honorable Phyllis J. Hamilton
United States District Court
Northern District of California
Oakland Courthouse
1301 Clay Street, Third Floor, Courtroom 3
Oakland, CA 94612

Re: *Nicolas v. Uber Technologies, Inc.*, No. 4:19-cv-08228-PJH
Requesting Leave to File Amicus Brief

Dear Judge Hamilton,

The undersigned organizations respectfully request leave to file the attached Brief of Amici Curiae in response to Defendant Uber Technologies, Inc.'s Motion to Dismiss ("Motion"). ECF Dkt. No. 46. Together the organizations and/or their members represent thousands of rideshare drivers, and advocate for the advancement of rights of drivers and workers in California. A statement of Amici's interests is set forth in the proposed brief.

On March 9, 2021, Amici asked the parties whether they would consent to this filing. Plaintiff Jericho Nicolas and Defendant Uber Technologies, Inc. ("Uber") both responded that they consent to the filing, with Uber stating that it intends to file a response to Amici's brief.

Amici intend their brief to be useful to the Court's consideration of a specific issue raised by Uber's Motion, namely the purported retroactivity of Proposition 22. Uber addressed this issue at length in its Motion and Reply, but Plaintiffs provided the Court with less than two pages of briefing on this critical question. ECF Dkt. 47 (Opp'n at pp. 11-13). Amici's brief does not "initiate, create, extend, or enlarge the issues" raised by Uber's Motion, but addresses this critical issue in order to assist the Court in its analysis of Uber's argument. See *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2007 WL 2022026, at *1 (N.D. Cal. July 9, 2007), citing *Miller-Wohl Co., v. Comm'r. of Labor and Indus. of Mont.*, 694 F.2d 203, 204 (9th Cir.1982). The Court's statements at the hearing on the Motion, as reported in the press, suggest the Court recognizes the significance of Uber's position on the claims of thousands of drivers covered by Prop 22. See <https://www.law360.com/employment-authority/articles/1359226/calif-voters-clearly-against-uber-drivers-suit-judge-says>.

Whether to allow an amicus brief "is solely within the Court's discretion, and generally courts have 'exercised great liberality in permitting amicus briefs.'" *California by & through Becerra v. United States Dep't of the Interior*, 381 F. Supp. 3d 1153, 1163–64 (N.D. Cal. 2019), citing *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007). "The 'classic role' of amicus curiae is to assist a court in a case of public interest by 'supplementing the efforts of counsel, and drawing the court's attention to law



that escaped consideration.”” *California by & through Becerra v. United States Dep’t of the Interior*, 381 F. Supp. 3d at 1163.

The undersigned recognizes that *amicus* briefs in district court proceedings should be reserved for exceptional circumstances. However, we respectfully submit that the pending motion presents an issue of first impression, that the Court’s resolution of the issue will be widely referenced in numerous other proceedings, and that the Court may benefit from the additional citations and arguments including in the proposed brief.

For the foregoing reasons, we respectfully request the Court’s permission to file the enclosed amicus brief. In the alternative, we request a pre-motion conference with the Court for leave to file such a brief.

Respectfully submitted,

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Enclosure